

Amendment A
Application Serial No. 10/707,503
Inventors: Allan McLane and William D. Kramer
Attorney Docket No. 718395.58

REMARKS

Claims 1-8 are currently pending in the Application. Applicants deeply appreciate the indication that Claim 5 is allowable. However, contrary to the remarks in the Office Action, Claim 5 is already an independent claim. It is assumed that it is this Claim that the Examiner has intended to allow.

Rejection Under 35 U.S.C. Section 102(e):

Claims 1, 2, 4 and 6 were rejected under 35 U.S.C. Section 102 (e) as being anticipated by Lehmann (U.S. Patent No. 6,164,248). These Claims are amended to recite: "...a valve rotor, wherein the valve rotor includes a first valve portion with at least one first internal fluid passage arrangement with at least two first openings and a second valve portion with at least one second internal fluid passage arrangement with at least two second openings, the at least one first internal fluid passage arrangement and the at least one second internal fluid passage arrangement being in fluid communication with each other,..." Then, the coolant is selectively directed from the valve to the radiator through the at least one first internal fluid passage arrangement or the heater or bypass line through both the through the at least one first internal fluid passage arrangement and through the at least one second internal fluid passage arrangement. Support for this amendment can be found on Paragraph [0026], Lines 1-7. Consequently, no new matter has been added. The non-allowed Claims now set forth that the valve control system includes a first fluid passage arrangement and a second fluid passage

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arrangement and with at least four (4) openings associated with the at least two internal fluid passage arrangements in the valve rotor.

Lehman discloses in Column 2, Lines 51-60: "According to FIG. 1, control device 1 has a cylindrical valve housing 2, in which a sleeve-shaped rotary slide valve 3 is supported. Rotary slide valve 3 is provided with an axial collector opening 4 on one end face, while it is closed on the other side, and is provided with a driving device 5 to swivel it about its longitudinal axis. Valve housing 2, on the side facing away from driving device 5, is provided with a cover 6 having a central flange 7, via which a connection is effected to a pump 8, shown in FIGS. 7 and 8, for collector opening 4." Therefore, as described and observed in FIG. 2, the sleeve-shaped rotary slide valve 3 or valve rotor has but a single opening and not at least four (4) openings in at least two separate internal fluid passage arrangements.

A proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in structure, function and result. In this case, the structure is different since Lehmann only has a single opening for an inlet and a single opening for an outlet within the valve rotor as shown in FIG. 2. Moreover, the function and associated results will be different since the fluid flow in Lehmann is controlled by a single internal fluid passage arrangement in the valve rotor rather than at least two internal fluid passage arrangements with at least four (4) openings potentially directing fluid through the valve rotor simultaneously.

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Therefore, Claims 1, 2, 4 and 6 overcome the rejection under 35 U.S.C. Section 102 (e) as being unpatentable over Lehmann.

Rejection Under 35 U.S.C. Section 103(a):

Claims 3, 7 and 8 were rejected under 35 U.S.C. Section 103 as being unpatentable over Lehmann in view of Zajac et al. (U.S. Patent No. 6,315,267). Since Claims 3 and 7 depend from and contain all of the limitations of Claims 2 and 6, respectively as amended, Claims 3 and 7 overcome Lehmann in the same manner as previously described above. If an independent claim is nonobvious under 35 U.S.C. Section 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Claim 8 has all of the same limitations as Claim 6 with additional limitations such as "...pumping coolant into the inlet port for the valve housing with the pump..." and "...positioning the valve rotor in a preselected rotational orientation relative to the valve housing with a biasing mechanism..." Therefore, Claim 8 is patentable over Lehmann in the same manner as Claim 6 previously recited above.

Moreover, Zajac et al. does not disclose a valve rotor that includes at least one first internal fluid passage arrangement with at least two first openings and a second valve portion with at least one second internal fluid passage arrangement with at least two second openings as recited in Claim 1. In contrast, Zajac et al. discloses in Column 3, Lines 16-22: "A rotary valve member 46 having a generally cylindrical or barrel-like configuration has an inlet aperture 48 formed therein on the cylindrical face thereof and which communicates with

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a similar aperture 50 formed on the opposite side of the barrel 46 as shown in FIG. 1 and in dashed outline in FIG. 2. Rotary valve member or barrel 46 has an upwardly extending hub 52." Therefore, there is a single internal fluid passage arrangement. It is respectfully believed to be axiomatic that a feature not disclosed in either of two cited references cannot come into being by their combination.

Moreover, it is respectfully believed that all claim limitations must be considered. In this case, Zajac et al. does not disclose a plurality of internal fluid passage arrangements to improve fluid control. It is now a basic tenet of patent law that the results and advantages produced by the claimed subject matter, of which the prior art is devoid, cannot be ignored simply because the claim limitations are similar to the otherwise barren prior art. It is respectfully believed that patentability of the claimed subject matter must be determined in view of the invention "as a whole." In this case, internal fluid passage arrangements to improve fluid control provide a significant advantage in fluid control not disclosed in Zajac et al. It is respectfully believed that the test is whether it would have been obvious to one of ordinary skill in the art given the teachings of the prior art references. Therefore, there is no recognition of the problem faced by the Applicants, i.e., improving fluid flow control and decreasing interdependency for the fluid flow coming from the outlet ports, and as result, one skilled in the art would not likely consider Lehmann or Zajac et al. in an attempt to solve such a problem. By improving fluid flow control, the efficiency of the system for cooling is increased by requiring less overall coolant flow to achieve the desired level of temperature.

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Therefore, Claims 3, 7 and 8 overcome the rejection under 35 U.S.C. Section 103(a) as being unpatentable over Lehmann in view of Zajac et al.

In further support of patentability, the following comments are provided. Lehmann and Zajac et al. use a **single internal fluid passage arrangement** through the rotor. The present invention uses a plurality of internal fluid passage arrangements, providing more flexibility in where one can position hoses to attach to the inlets and outlets on the housing and can provide for more than two flow paths selectable by the appropriate positioning of the rotor. Thus, the present invention provides an advantage not available in any of the teachings of the cited references, i.e., the ability to better position the outlets at various angular orientations because of the use of at least two internal fluid passage arrangements to better direct flow of coolant to various devices. Thus, the outlets can be positioned at more circumferential positions around the valve housing than can be accomplished with Lehmann or Zajac et al. Furthermore, by the use of two internal fluid passage arrangements, more flexibility can be provided in flow path formation for the flow of coolant without compromising flow to needed downstream devices, e.g., a radiator and a heater.

There is no suggestion or teaching in the references of record of the present invention. It is also submitted that a new search is not required, as the plurality of internal flow passages was addressed in previously presented and allowable Claim 5. No new matter is introduced by the amendments.

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It is now believed that Claims 1-4 and 6-8 of the present application, as currently amended, are allowable and allowance of the Claims is respectfully requested in addition to previously allowed Claim 5. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's Amendment, or if the Examiner should have any questions regarding this amendment, it is respectfully requested that the Examiner please telephone Applicants' undersigned Attorney in this regard.

Respectfully submitted,

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